

**UNITED STATES BANKRUPTCY COURT**  
Eastern District of California

**Honorable Ronald H. Sargis**  
Bankruptcy Judge  
Sacramento, California

**June 13, 2023 at 2:00 p.m.**

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1. [23-20649-E-13](#)  
[DPC-1](#)

**ROBERT FENILI**  
Mary Ellen Terranella

**CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY DAVID  
P. CUSICK  
4-24-23 [13](#)**

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

**Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the Objection. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).**

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Local Rule 9014-1(f)(2) Objection—No Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, and parties requesting special notice on April 24, 2023. By the court's calculation, 29 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection.

<b>The Objection to Confirmation of Plan is overruled.</b>
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The Chapter 13 Trustee, David Cusick ("Trustee"), opposes confirmation of the Plan on the basis that:

A. Debtor was not sworn in or examined at the First Meeting of Creditors.

## **DISCUSSION**

### **Failure to be Examined**

Debtor appeared, but was not sworn in or examined at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. An examination under oath is required. *See* 11 U.S.C. § 343. Attempting to confirm a plan while failing to be questioned by the Chapter 13 Trustee and any creditors who appear represents a failure to cooperate. *See* 11 U.S.C. § 521(a)(3). That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

The Continued Meeting of Creditors will be held on June 8, 2023 at 1:00 p.m. The court continues the hearing on the Objection to Confirmation to June 13, 2023 at 2:00 p.m, to be heard after the continued Meeting of Creditors.

### **June 8, 2023 341 Meeting**

Trustee's June 8, 2023 Report indicates the 341 Meeting was held and concluded on June 8, 2023. Debtor appeared. Given this was Trustee's only objection, the Objection is overruled.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Objection is overruled, and Robert Donald Fenili's ("Debtor") Chapter 13 Plan filed on March 1, 2023, is confirmed. Counsel for Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

**Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).**

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Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 30, 2023. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion to Extend the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----  
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<p><b>The Motion to Extend the Automatic Stay is granted.</b></p>
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Cassandra Eilene Viscia ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) extended beyond thirty days in this case. This is Debtor's second bankruptcy petition pending in the past year. Debtor's prior bankruptcy case (No. 22-21644) was dismissed on January 26, 2023, after Debtor failed to make the Chapter 13 Plan payments. *See* Order, Bankr. E.D. Cal. No. 22-21644, Dckt. 40, January 26, 2023. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

Here, Debtor states that the instant case was filed in good faith and explains that the previous case was dismissed because Debtor was under the mistaken belief that Debtor would receive a permanent loan modification with Creditor Shellpoint ("Creditor"), which led Debtor to stop making Plan payments and allow their case to be dismissed. Declaration, Dckt. 13 ¶¶ 6-8. Debtor indicates they will be filing an adversary proceeding against Creditor to compel Creditor to honor their obligation to provide a loan modification.

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(3)(B). As this court has noted in other cases, Congress expressly provides in 11 U.S.C. § 362(c)(3)(A) that the automatic stay **terminates as to Debtor**, and nothing more. In 11 U.S.C. § 362(c)(4), Congress expressly provides that the automatic stay **never goes into effect in the bankruptcy case** when the conditions of that section are met. Congress clearly knows the difference between a debtor, the bankruptcy estate (for which there are separate express provisions under 11 U.S.C. § 362(a) to protect property of the bankruptcy estate) and the bankruptcy case. While terminated as to Debtor, the plain language of 11 U.S.C. § 362(c)(3) is limited to the automatic stay as to only Debtor. The subsequently filed case is presumed to be filed in bad faith if one or more of Debtor's cases was pending within the year preceding filing of the instant case. *Id.* § 362(c)(3)(C)(i)(I). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* § 362(c)(3)(C).

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); *see also* Laura B. Bartell, *Staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209–10 (2008). An important indicator of good faith is a realistic prospect of success in the second case, contrary to the failure of the first case. *See, e.g., In re Jackola*, No. 11-01278, 2011 Bankr. LEXIS 2443, at \*6 (Bankr. D. Haw. June 22, 2011) (citing *In re Elliott-Cook*, 357 B.R. 811, 815–16 (Bankr. N.D. Cal. 2006)). Courts consider many factors—including those used to determine good faith under §§ 1307(c) and 1325(a)—but the two basic issues to determine good faith under § 362(c)(3) are:

- A. Why was the previous plan filed?
- B. What has changed so that the present plan is likely to succeed?

*In re Elliot-Cook*, 357 B.R. at 814–15.

Debtor has sufficiently demonstrated the case was filed in good faith under the facts of this case and the prior case for the court to extend the automatic stay.

The Motion is granted, and the automatic stay is extended for all purposes and parties, unless terminated by operation of law or further order of this court.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Extend the Automatic Stay filed by Cassandra Eilene Viscia (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, and the automatic stay is extended pursuant to 11 U.S.C. § 362(c)(3)(B) for all purposes and parties, unless terminated by operation of law or further order of this court.

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

**Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).**

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Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on May 17, 2023. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

The Motion to Extend the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----  
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<p><b>The Motion to Extend the Automatic Stay is granted.</b></p>
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Bonita Melendez ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) extended beyond thirty days in this case. This is Debtor's second bankruptcy petition pending in the past year. Debtor's prior bankruptcy case (No. 22-21253) was dismissed on January 12, 2023, after Debtor was delinquent in Plan payments. *See* Order, Bankr. E.D. Cal. No. 22-21253, Dckt. 41, January 12, 2023. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

Here, Debtor states that the instant case was filed in good faith and explains that the previous case was dismissed because Debtor fell behind on Plan payments after experiencing health issues. Declaration, Dckt. 11. Debtor states they are mitigating these issues and will be able to make Plan payments under the current case. *Id.*

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(3)(B). As this court has noted in other cases, Congress expressly provides in 11 U.S.C. § 362(c)(3)(A) that the automatic stay **terminates as to Debtor**, and nothing more. In 11 U.S.C. § 362(c)(4), Congress expressly provides that the automatic stay **never goes into effect in the bankruptcy case** when the conditions of that section are met. Congress clearly knows the difference between a debtor, the bankruptcy estate (for which there are separate express provisions under 11 U.S.C. § 362(a) to protect property of the bankruptcy estate) and the bankruptcy case. While terminated as to Debtor, the plain language of 11 U.S.C. § 362(c)(3) is limited to the automatic stay as to only Debtor. The subsequently filed case is presumed to be filed in bad faith if one or more of Debtor's cases was pending within the year preceding filing of the instant case. *Id.* § 362(c)(3)(C)(i)(I). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* § 362(c)(3)(C).

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); *see also* Laura B. Bartell, *Staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209–10 (2008). An important indicator of good faith is a realistic prospect of success in the second case, contrary to the failure of the first case. *See, e.g., In re Jackola*, No. 11-01278, 2011 Bankr. LEXIS 2443, at \*6 (Bankr. D. Haw. June 22, 2011) (citing *In re Elliott-Cook*, 357 B.R. 811, 815–16 (Bankr. N.D. Cal. 2006)). Courts consider many factors—including those used to determine good faith under §§ 1307(c) and 1325(a)—but the two basic issues to determine good faith under § 362(c)(3) are:

- A. Why was the previous plan filed?
- B. What has changed so that the present plan is likely to succeed?

*In re Elliot-Cook*, 357 B.R. at 814–15.

Debtor has sufficiently demonstrated the case was filed in good faith under the facts of this case and the prior case for the court to extend the automatic stay.

The Motion is granted, and the automatic stay is extended for all purposes and parties, unless terminated by operation of law or further order of this court.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Extend the Automatic Stay filed by Bonita Melendez (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, and the automatic stay is extended pursuant to 11 U.S.C. § 362(c)(3)(B) for all purposes and parties, unless terminated by operation of law or further order of this court.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

**Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).**

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Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 16, 2023. By the court's calculation, 28 days' notice was provided. 14 days' notice is required.

The Motion to Approve Loan Modification was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----  
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<p><b>The Motion to Approve Loan Modification is granted.</b></p>
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The Motion to Approve Loan Modification filed by Joseph Olivo and Pagasa Olivo ("Debtor") seeks court approval for Debtor to obtain post-petition credit to bring Debtor current under their mortgage.

Under the Plan, Freedom Mortgage Corporation ("Freedom"), was to be paid monthly payments of \$1,980.00 as a Class 4 claim. Plan, Dckt. 4 § 3.10. Debtor's Motion and Declaration states they suffered hardships during COVID-19, which led to a forbearance agreement with Freedom. Motion, Dckt. 22; Declaration, Dckt. 24.

Although the Motion states this is a loan modification, the terms of the agreement and supporting exhibits do not reflect a modification of Debtor's existing obligation with Freedom. Rather, it appears Debtor is exiting forbearance with Freedom by executing a second promissory note ("Second Note") and Subordinate Deed of Trust with the Secretary of Housing and Urban Development ("HUD"). Exhibit A, Dckt. 25 at 2 ("Promissory Note") and 4 ("Subordinate Deed of Trust").

Under the First Deed of Trust, Freedom is the Lender. Proof of Claim 7-1. From the evidence provided, it appears that as a result of the COVID-19 pandemic, Debtor received assistance from HUD to stay current on their obligation with Freedom. The Second Note and Subordinate Deed of Trust represents the credit extended to Debtor from HUD. Freedom is the servicer for this second loan, as evidenced by the Subordinate Deed of Trust. Exhibit A, Dckt. 25 at 4 (“Subordinate Deed of Trust”).

Given the Second Note and Subordinate Deed of Trust addresses Debtor’s existing obligation under their note with Freedom, the court will treat the new obligation as a loan modification.

Upon the court’s review of the exhibits, the debt owed to HUD is in the amount of \$8,224.64. Payment to HUD will not required until the either property is sold or the mortgage with Freedom ends on May 1, 2042.

### **TRUSTEE’S NONOPPOSITION**

Trustee filed a nonopposition on May 24, 2023. Dckt. 27. Trustee states Debtor is current on the Plan and Creditor is listed in Class 4. Trustee recommends the Motion is granted.

### **DISCUSSION**

Debtor is in the sixtieth (60<sup>th</sup>) month of the Plan. The court finds that the proposed loan modification and credit, based on the unique facts and circumstances of this case, is reasonable. There being no opposition from any party in interest and the terms being reasonable, the Motion is granted.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Approve Loan Modification filed by Joseph Olivo and Pagasa Olivo (“Debtors”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the court authorizes Joseph Olivo and Pagasa Olivo to amend the terms of the loan with Freedom Mortgage Corporation (“Creditor”), which is secured by the real property commonly known as 8420 Tawny Court, Sacramento, California, on such terms as stated in the Modification Agreement filed as Exhibit A in support of the Motion (Dckt. 22).



**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

**Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the Objection. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).**

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Local Rule 9014-1(f)(2) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on May 24, 2023. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection. At the hearing -----.

<p><b>The Objection to Confirmation of Plan is sustained.</b></p>
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The Chapter 13 Trustee, David Cusick ("Trustee") opposes confirmation of the Plan on the basis that:

- A. Debtor did not appear at the First Meeting of Creditors held on May 18, 2023. Irene Saenz, Conservator for Debtor, appeared at that Meeting; however, testimony was not taken, and the Conservator has not been determined to be eligible to appear on behalf of Debtor.
- B. Debtor is delinquent on plan payments.
- C. Debtor has failed to provide a copy of her Federal Income Tax Return.

## DISCUSSION

Trustee's objections are well-taken.

### Failure to Appear at 341 Meeting

Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. Appearance is mandatory. *See* 11 U.S.C. § 343. Conservator for Debtor did appear at the Meeting of Creditors; however, testimony was not taken, and the Meeting was continued until 1:00 p.m. on June 13, 2023, the date of this hearing.

Debtor's Conservator has not yet been approved by the Bankruptcy Court.

Attempting to confirm a plan while failing to appear and be questioned by Trustee and any creditors who appear represents a failure to cooperate. *See* 11 U.S.C. § 521(a)(3). That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

### Delinquency

Debtor is \$1,447.00 delinquent in plan payments, which represents one month of the \$1,447.00 plan payment. Before the hearing, another plan payment will be due. According to Trustee, the Plan in § 2.01 calls for payments to be received by Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

### Failure to Provide Tax Returns

Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. *See* 11 U.S.C. § 521(e)(2)(A)(i); FED. R. BANKR. P. 4002(b)(3). Debtor has failed to provide the tax transcript. That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The Objection is sustained, and the Plan is not confirmed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, David Cusick ("Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

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**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 19, 2023. By the court's calculation, 55 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the Amended Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<p><b>The Motion to Confirm the Amended Plan is denied.</b></p>
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The debtor, Nadia Zhiry ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for monthly plan payments of \$500.00 for months one (1) through twenty-four (24), followed by monthly plan payments of \$1,550.00 for months twenty-five (25) through sixty (60), and a 100% dividend to unsecured claims totaling \$58,500.00. Amended Plan, Dckt. 189. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

#### CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee") filed an Opposition on May 24, 2023. Dckt. 223. Debtor filed a Response on June 3, 2023. Dckt. 236. Debtor states:

1. **Treatment of Keena Claim:**
  - a. Debtor restates much of their arguments in their Objection to Claim, Docket Control No. PGM-3.

**2. Treatment of JP Morgan Chase Claims:**

- a. Debtor clarifies that their daughter, Lyubov Zhiry, shall pay the claims direct.

**3. Additional Provisions:**

- a. Final Inspection Concluded - Debtor states the final inspection for the "1039" property was approved, which allows Debtor's daughter, Vers Zhiry, to live in the subject property by August 2023. With ability to reside at 1039 Claire Ave, Debtor is prepared to increase payments to \$1,550 per month for the remaining Plan terms.

**DISCUSSION**

Debtor's Reply largely addresses Trustee's concerns. However, the court still finds the following issues with Debtor's Plan.

**Feasibility /  
Failure to Afford Plan Payment**

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6).

**1. Keena Claim:**

- a. Debtor's Plan relies on the court sustaining Debtor's Objection to Receiver's Claim. Debtor argues no claim exists. There is a genuine dispute as to the amount of Receiver's claim, which is being litigated in Docket Control No. PGM-3. Without the court sustaining Debtor's Objection to Receiver's Claim in its entirety, the Plan is not feasible. 11 U.S.C. § 1325(a)(6).

**2. JP Morgan Chase Claims:**

- a. Debtor does not provide a declaration of Lyubov Zhiry as evidence that they will make all payments to Creditor JP Morgan throughout the life of the Plan.

**3. Additional Provisions:**

- a. Debtor provides in the form of Exhibit A an "Application Receipt" from the City of Sacramento for 1039 Claire Avenue. The Exhibit indicates the status is "Finaled" for building, mechanical, plumbing, and electrical inspections. The Exhibit was not authenticated.

- b. Debtor states the final inspection was completed for 1039 Claire Avenue on June 2, 2023, however, does not provided any authenticated evidence to support the 1039 property was completed and able for daughter to move into.

Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

The Amended Plan does not comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is not confirmed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Nadia Zhiry ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Confirm the Amended Plan is denied, and the proposed Chapter 13 Plan is not confirmed.

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

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Local Rule 3007-1 Objection to Claim—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on April 23, 2023. By the court’s calculation, 51 days’ notice was provided. 44 days’ notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days’ notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days’ notice for written opposition).

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

**The Objection to Proof of Claim Number 1-1 of Gerard F. Keena, II, is overruled without prejudice.**

Nadia Zhiry, Chapter 13 Debtor, (“Debtor”) requests that the court disallow the claim of Gerard F. Keena, II, (“Receiver”), Proof of Claim No. 1-1 (“Claim”), Official Registry of Claims in this case. The Claim is asserted to be secured in the amount of \$183,585.18. Debtor asserts, without stating the legal basis supporting such argument, that:

1. **Receiver has no claim:**
  - a. Receiver has no claim against Debtor “having been discharged in the ‘Chapter 7’, as the ‘Receiver’ . . . .” The Receiver has not been reappointed. Objection, Dckt. 193 at 3:4-7.

The court notes, Debtor has not provided any legal grounds that Receiver was discharged upon Debtor receiving their Chapter 7 discharge. Upon review of 11 U.S.C. § 727, a Chapter 7 discharge does not discharge the duties of an appointed custodian, but rather discharges debts and liabilities that arose before the date requesting relief. Debtor does not point to any authority in the Bankruptcy Code or the

Superior Court's Receivership Order (*see* Order Appointing a Receiver Pursuant to Stipulated Judgment, Cal. Super. Ct. Sacramento Cnty. No. 34-2017-00208154, May 3, 2021 (filed in this case as Dckt. 195) (hereinafter the "Receivership Order")) that requires "reappointment" of the Receiver. The discharge did not abate the Receiver and Debtor provides no grounds that Receiver would need to be reappointed after receiving Chapter 7 relief.

**2. Receiver has no standing:**

- a. Receiver has no "standing" to assert any claim in this Chapter 13 case. Objection, Dckt. 193 at 3:14-15.

Upon review of the Proof of Claim, Receiver states they are owed money for the services provided. Receiver is not asserting a claim for a third party. Receiver, thus, has standing. Debtor conceded this at the hearing on the Status Conference on the Motion to Excuse Turnover and/or Motion to Confirm Termination or Absence of Stay.

**3. Receiver is owed no funds:**

- a. Receiver's Proof of Claim reflects no costs, no fees, and no charges between the filing of the previous Chapter 7 case and the filing of the current Chapter 13 case. Objection, Dckt. 193 at 2:8-12.

The Chapter 7 case was filed on July 29, 2021. E.D. Cal. No. 21-22759. The current case was filed on May 25, 2022. E.D. Cal. No. 22-21314.

Upon review of Receiver's Proof of Claim (E.D. Cal. No. 22-21314, Proof of Claim 1-1), Receiver does not provide a breakdown of the fees incurred before and after the Chapter 7 case. However, Receiver's Proof of Claim in the Chapter 7 case (E.D. Cal. No. 21-22759, Proof of Claim 1-1) was for \$82,217.54. Receiver's Proof of Claim in the current case is for \$183,585.18. Receiver clarifies their pre-Chapter 7 filing fees and post-Chapter 7 filing fees in their Response, which is summarized under "Receiver's Response."

- b. Having been discharged, and no claim transferring into the pending Chapter 13 case, Receiver is owed no funds.

The court notes, the claim is asserted to be fully secured. It is well known that liens survive a debtor's discharge, so the fact that Debtor received a discharge is not relevant to the claims survival. The debt still exists, and to the extent it is secured it is still enforceable.

## **RECEIVER'S RESPONSE**

Receiver filed a response on May 30, 2023. Dckt. 234. Receiver indicates they amended their Proof of Claim to clarify distinctions between the *in personam* and *in rem* claim. The court notes, once a party has objected to a proof of claim, the creditor asserting the claim may not withdraw the claim except on order of the court. FED. R. BANKR. P. 3006. The court acknowledges that Receiver attempts to address Debtor's contentions that Receiver would be violating the discharge injunction.

The amended Proof of Claim, Proof of Claim 1-2, indicates the following:

Claim amount.....Unknown

It is not clear to the court why the amended claim amount is unknown, when Receiver later asserts the claim is fully secured in the amount of \$185,585.18.

Amount of claim that is secured.....\$185,585.18

Amount owed from expenses incurred  
**pre-Chapter 7 filing** (July 29, 2021).....\$84,461.04

Amount owed from expenses incurred  
**post-Chapter 7 filing** to date of  
Chapter 13 filing (July 29, 2021 - May 25, 2022).....\$99,124.14

Receiver first addresses the *in personam* claim and states that Debtor's Objection to Receiver's Proof of Claim has been rendered moot because the \$99,124.14 *in personam* claim in the Amended Receiver Proof of Claim does not reflect any personal liability of Debtor that was previously discharged in Debtor's Chapter 7 case. *Id.* at 7; *see also* Attachment A to Amended Proof of Claim of Gerard F. Keena II, filed May 26, 2023.

Receiver also states that it still has a secured claim that was not previously discharged and that remains as an encumbrance against the Claire Avenue Properties. Dckt. 234, at 7. Finally, Receiver states that it appears that Debtor is arguing that the Chapter 7 case abated the Receivership Order. Dckt. 234, at 7. Receiver asserts that this argument is incorrect and lacks citation to any legal authority in support. *Id.* Receiver points to 11 U.S.C. § 543(d) and argues that the order appointing Receiver has not been abated and it was not necessary to reappoint the Receiver as Debtor suggests. *Id.* at 8.

## DEBTOR'S REPLY

Debtor filed a reply on June 3, 2023. Dckt. 240. Debtor's reply concedes that the Amended Proof of Claim "technically moot[s]" Debtor's Objection, but asserts that:

(1) Receiver did not follow the state court order;

(2) Receiver has not had any fees approved;

and (3) Receiver has not recorded its lien as required by the state court, rendering any claim as unsecured rather than secured.

Dckt. 240, at 1-2.

Debtor identifies a number of disputed material facts, *id.* at 7-8, and requests that this court either sustain its objection or, in the alternative, allow for an evidentiary hearing to determine the value of the claim, if any, *id.* at 9-10.



## DISCUSSION

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial evidence to overcome the prima facie validity of a proof of claim, and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006). Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, and requires financial information and factual arguments. *In re Austin*, 583 B.R. 480, 483 (B.A.P. 8th Cir. 2018). Notwithstanding the prima facie validity of a proof of claim, the ultimate burden of persuasion is always on the claimant. *In re Holm*, 931 F.2d at p. 623.

It appears what remains unresolved is the amount of fees and expenses that are to be recoverable by Receiver. Debtor argues that Receiver has no fees allowed by the state court under the Receivership Order.

California Rule of Court 3.1179 states that the Receiver is “the agent of the court,” to act in the benefit of all people. The Receiver is an agent of the Superior Court of California. The court has not been provided with any legal authority indicating that a federal bankruptcy judge takes over the state court's jurisdiction to determine the rights of the Receiver.

California Health and Safety Code gives explicit authority to a receiver to record a lien for fees and expenses, allowing a receiver:

To borrow funds to pay for repairs necessary to correct the conditions cited in the notice of violation and to borrow funds to pay for any relocation benefits authorized by paragraph (6) and, **with court approval, secure that debt** and any moneys owed to the receiver for services performed pursuant to this section with a lien on the real property upon which the substandard building is located. **The lien shall be recorded in the county recorder's office** in the county within which the building is located.

Cal. Health & Safety Code § 17980.7 (emphasis added).

Pursuant to the court order that was provided to the court, and recorded on May 13, 2021, “[t]he Receiver may record a lien (‘Receiver’s Lien’) against the Subject Properties to secure the repayment of the Receiver’s compensation, costs, and expenses, in accord with California Health and Safety Code section 17980.7(c)(4)(G). The Receiver’s Lien will be a lien on the Subject Properties prior and superior to all pre-existing private liens and encumbrances.” Proof of Claim 1-2, Recorded Order Appointing a Receiver Pursuant to Stipulated Judgment, Attachment 1 at ¶ 7.

From the evidence provided to the court, Receiver received a lien on the property. The court has not been provided legal authority indicating that upon the filing of a bankruptcy case, a Receiver forfeits their rights to fees. Debtor has not provided law and evidence that recording the order of the Superior Court stating a lien was granted and does not constitute perfection.

Based on the evidence before the court, the court has not been provided sufficient evidence to disallow Receiver's claim. The Objection to the Proof of Claim is overruled without prejudice.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to Claim of Gerard F. Keena, II, ("Receiver"), filed in this case by Nadia Zhiry, Chapter 13 Debtor, ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Objection to Proof of Claim Number 1-1 of Receiver is overruled without prejudice.

8. <a href="#"><u>22-21314-E-13</u></a> <a href="#"><u>DPC-2</u></a>	<b>NADIA ZHIRY</b> <b>Peter Macaluso</b>	<b>CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK</b> <b>7-15-22 [56]</b>
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**Final Ruling:** No appearance at the June 13, 2023 hearing is required.

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Local Rule 9014-1(f)(2) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, and parties requesting special notice on July 15, 2022. By the court's calculation, 32 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection.

<b>The Motion to Confirm the Amended Plan is denied as moot.</b>
--

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Subsequent to the filing of this Motion, the debtor, Nadia Zhiry (“Debtor”), filed a First Amended Plan and corresponding Motion to Confirm on April 19, 2023. Dckts. 189, 186. Filing a new plan is a de facto withdrawal of the pending plan. The Motion to Confirm the Amended Plan is denied as moot, and the plan is not confirmed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Nadia Zhiry (“Debtor”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is denied as moot, and the proposed Chapter 13 Plan is not confirmed.

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

**Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the Objection. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).**

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Local Rule 9014-1(f)(2) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on May 24, 2023. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection. At the hearing -----.

<p><b>The Objection to Confirmation of Plan is sustained.</b></p>
---

The Chapter 13 Trustee, David Cusick ("Trustee") opposes confirmation of the Plan on the basis that:

- A. Trustee cannot assess the feasibility of the Plan because Debtor has failed to provide all information required by the schedules and budget.
- B. The Plan may not be Debtor's best efforts, as it appears that Debtor has additional disposable income to pay toward the Plan.

## DISCUSSION

Trustee's objections are well-taken.

### **Failure to List All Community Debts**

Debtor indicated to Trustee at the initial meeting of creditors that the non-filing spouse has a car loan and credit card debt and makes payments on them using community funds. Debtor has not listed these assets and claims on their Schedules, however, they have amended their Schedule J to include “Non-filing Spouse Credit Cards.” Amended Schedule, Dckt. 18 at 3:21. Amended Schedule J does not provide payment for the non-filing spouse’s vehicle.

Given Debtor’s failure to file Amended Schedules to include these assets and claims, and expenses, the court cannot determine whether the Plan complies with provisions of the Code, pursuant to 11 U.S.C. § 1325(a)(1). Additionally, it indicates a failure to cooperate. *See* 11 U.S.C. § 521(a)(3). That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

### **Failure to Provide Disposable Income**

Trustee alleges that the Plan violates 11 U.S.C. § 1325(b)(1), which provides:

If the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan, then the court may not approve the plan unless, as of the effective date of the plan the value of the property to be distributed under the plan on account of such claim is not less than the amount of such claim; or the plan provides that all of the debtor’s projected disposable income to be received in the applicable commitment period beginning on the date that the first payment is due under the plan will be applied to make payments to unsecured creditors under the plan.

The Plan provides for monthly plan payments of \$850.00, and a 100% dividend to unsecured claims totaling \$40,654.00. Dckt. 3. Debtor’s 2022 tax returns indicate that Debtor was entitled to a \$9,578.00 combined refund, which is not listed in Schedule I. This is significant, as it appears that Debtor has additional disposable income to pay toward the Plan. Thus, the court may not approve the Plan.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The Objection is sustained, and the Plan is not confirmed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, David Cusick (“Trustee”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

**Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).**

-----

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 22, 2023. By the court's calculation, 22 days' notice was provided. 14 days' notice is required.

The Motion to Employ was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----.

<p><b>The Motion to Employ is denied without prejudice.</b></p>
---

Jamie Lee Howell ("Debtor") seeks to employ Reed Murphy ("Agent") and Power West Properties ("Brokerage Firm") pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330. Debtor seeks the employment of Agent and Brokerage Firm to sell Debtor's real property located at 9 Charley Lynds Way, Forbestown, CA ("Property").

The Motion asserts that Agent and Brokerage Firm's appointment and retention is necessary to establish the fair market value of the Property and to market and sell the Property listed on Schedule A/B in Debtor's petition. Dckt. 260. Agent and Brokerage Firm is to represent Debtor in negotiating the sale of the Property, market, procure, and submit all purchase offers to Debtor, and in consideration for the services, Real Estate Agent will receive upon completion of any sale, a real estate sales commission of 6% of the purchase price.

**Failure To Provide Evidence**

Debtor provides a “Support Document” titled “Trust Advisory (Listing)”. This document has not been properly authenticated to the court.

Additionally, the Motion indicates Debtor’s attorney is the broker of record for Power West Properties, Inc. The Motion states “there is no conflict of interest as all parties desire to sell the Property for the highest value possible which is a benefit to the creditors.” Motion, Dckt. 274 ¶ 12. The Motion does not provide testimony under penalty of perjury to the court that Debtor’s attorney, nor the Agent or any others the Brokerage Firm, have any interest adverse to Debtor or the estate.

Pursuant to § 327(a), a trustee or debtor in possession is authorized, with court approval, to engage the services of professionals, including attorneys, to represent or assist the trustee in carrying out the trustee’s duties under Title 11. To be so employed by the trustee or debtor in possession, the professional must not hold or represent an interest adverse to the estate and be a disinterested person.

Pursuant to 11 U.S.C. § 328(c), a professional may be denied employment if professional under § 327 is not a disinterested person, or represents or holds an adverse interest to the estate. Here, in seeking such employment, Debtor’s attorney is the broker of record at the Brokerage Firm. The court is presented with clear conflicts of interest as Debtor’s attorney is responsible and oversees the Brokerage Firm.

Debtor has not provided a waiver of any conflict of interest. Even if Debtor had provided a waiver, “[t]he requirement that a professional be ‘disinterested’ cannot be waived or circumvented by agreement or consent among creditors and the debtor. 3 Collier on Bankruptcy P 328.05 (16th 2022) (citing *In re Amdura Corp.*, 121 B.R. 862, 866 (Bankr. D. Colo. 1990) (stating provisions under 11 U.S.C. § 327 are not able to be limited by waiver. The professional must be disinterested and not hold an interest adverse to the estate.)).

At a very basic level, every law student is taught that the court relies on properly authenticated, admissible evidence to establish facts in any proceeding—the court cannot and does not merely take Motions and “Support Documents” counsel at their word. Apart from the practical effect that the court has been given a request for relief without any established factual basis, the Local Rules also affirmatively require that evidence be filed along with every motion and request for relief. LOCAL BANKR. R. 9014-1(d)(3)(D). Failure to comply with the Local Rules is grounds for an appropriate sanction. LOCAL BANKR. R. 1001-1(g).

The Motion is denied.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Employ filed by Jamie Lee Howell (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Employ is denied without prejudice.

11 thru 12

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on March 10, 2023. By the court's calculation, 61 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<b>The Motion to Dismiss is <span style="color: red;">XXXXXXX</span></b>
--

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that:

1. the debtor, Karen Patrice Blakley ("Debtor"), is delinquent in Plan payments.

## **DEBTOR'S OPPOSITION**

Debtor filed an Opposition on April 26, 2023. Dckt. 70. Debtor states they will be filing a modified plan prior to the hearing date.

## **DISCUSSION**

### **Delinquent**

Debtor is \$1,088.00 delinquent in plan payments, which represents multiple months of the \$275.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Unfortunately for Debtor, a promise to file a modified plan is not evidence that resolves the Motion.



Debtor's counsel reported that the modified plan and motion to confirm have been filed and set for hearing. The Trustee concurred with the continuance of this matter to the time and date set for the Motion to Confirm.

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

**June 13, 2023**

At the hearing, **xxxxxxx**

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Dismiss is **xxxxxxxxxx**

12. <a href="#">20-23431-E-13</a> <a href="#">MJD-5</a>	<b>KAREN BLAKLEY</b> <b>Matthew DeCaminada</b>	<b>MOTION TO MODIFY PLAN</b> <b>5-9-23 [73]</b>
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**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

-----  
Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 9, 2023. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at

the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<b>The Motion to Confirm the Modified Plan is denied.</b>
---

The debtor, Karen Blakley (“Debtor”) seeks confirmation of the Modified Plan due to Trustee moving to dismiss Debtor’s case after Debtor missed two Plan payments because of increased rent. Declaration, Dckt. 75. The Modified Plan provides \$8,154.00 to be paid through payments of \$302.00 per month, beginning May 25, 2023, for the remainder of the plan. Modified Plan, Dckt. 77. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

### **CHAPTER 13 TRUSTEE’S OPPOSITION**

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on May 23, 2023. Dckt. 83. Trustee opposes confirmation of the Plan on the basis that:

- A. The Plan is overextended by possibly four months.
- B. Debtor’s expenses are not reduced enough to comply with the Plan.

### **DISCUSSION**

#### **Failure to Complete Plan Within Allotted Time**

Debtor will likely be in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to the Chapter 13 Trustee, the Plan will complete in possibly 64 months. Debtor proposes monthly payments of \$8,154.00 per month, however, Trustee estimates \$8,512.30 per month is required due to Trustee’s fees. Debtor’s plan payment would need to increase to \$346.00 per month over the remaining 27 months to be feasible with 0% to unsecured creditors. *Id.* The Plan would exceed the maximum sixty months allowed under 11 U.S.C. § 1322(d).

#### **Cannot Comply with the Plan**

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6).

Debtor purports adjustments in the monthly budget has been made to accommodate Debtor’s reduction in income and increased rent. Declaration, Dckt. 75 ¶ 10. Debtor states they have reduced food, personal goods, and transportation expenses. *Id.*

When comparing Debtor’s Original Schedule J (Dckt. 1) with their Amended Schedule J (Dckt. 79), the following expenses have changed:

	Original Schedule J (Dckt. 1)	Amended Schedule J (Dckt. 79)
Rental or Home Ownership Expenses	\$1,040.00	\$1,330.00
Home Maintenance, Repair, and Upkeep	\$15.00	\$0.00
Clothing, Laundry, and Dry Cleaning	\$25.00	\$15.00
Transportation	\$125.00	\$150.00
SSI Deductions	\$0.00	\$164.90

From review of the Supplemental Schedule J, there is no reduction in food expenses (\$250.00) or personal care products (\$25.00) as Debtor states in their Declaration. Additionally, transportation expenses has not decreased as Debtor suggests, but has increased from \$125.00 to \$150.00.

Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

The Modified Plan does not comply with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Karen Blakley ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Motion to Confirm the Modified Plan is denied, and the proposed Chapter 13 Plan is not confirmed.

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 10, 2023. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

The Motion to Incur Debt has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered.

<p><b>The Motion to Incur Debt is denied without prejudice.</b></p>
---

Terrance Levell Hall and Sacha Cadell Hall ("Debtor") seeks permission to purchase a 2011 GMC Yukon, with a total purchase price of \$25,249.60 and monthly payments of \$616.64 to Auto Empire over 14 month with a 0.0% fixed interest rate.

#### TRUSTEE'S RESPONSE

Trustee filed a Response on May 30, 2023. Dckt. 79. Trustee states they do not oppose the Motion, but addresses the following:

1. Debtor's Declaration does not indicate which vehicle the 2011 GMC Yukon is replacing.
2. The Motion states the down payment comes from Debtor's bonus and tax refunds, which is contrary to the First Amended Plan which states Debtor's insurance proceeds will be used to purchase a replacement vehicle.

3. Debtor is delinquent in Plan payments, however, the confirmation hearing was continued to July 11, 2023 for Debtor's Attorney to prepare a corrected Plan.

## DEBTOR'S REPLY

Debtor filed a Reply to Trustee's Response. Dckt. 83. The court notes, the "Opposition" reads more as a reply to Trustee's Response. Debtor states:

1. Debtor has filed a corrected First Amended Plan which corrects the additional provisions to mirror the court's order for purchase of the replacement automobile.
2. Debtor's vehicle that was totaled was a 2007 GMC Yukon XL 1500.

## DISCUSSION

A motion to incur debt is governed by Federal Rule of Bankruptcy Procedure 4001(c). *In re Gonzales*, No. 08-00719, 2009 WL 1939850, at \*1 (Bankr. N.D. Iowa July 6, 2009). Rule 4001(c) requires that the motion list or summarize all material provisions of the proposed credit agreement, "including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions." FED. R. BANKR. P. 4001(c)(1)(B). Moreover, a copy of the agreement must be provided to the court. *Id.* at 4001(c)(1)(A). The court must know the details of the collateral as well as the financing agreement to adequately review post-confirmation financing agreements. *In re Clemons*, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007).

Debtor provides the following grounds for the purchase of the vehicle:

1. Debtor does not have a confirmed plan, however, the proposed Plan is a 100% Plan and Debtor is current on proposed Plan payments.
2. Debtor requests permission to incur debt for the purchase of a 2011 GMC Yukon XL for \$25,249.60.
3. Debtor has made a down payment of \$16,000.

Debtor's Declaration indicates the down payment came from debtor Terrance's bonus in the amount of \$13,518.30, the remainder from debtor's tax return. Declaration, Dckt. 72.

Upon review of the docket, by prior order of the court, the court stated Debtor can use insurance proceeds to purchase a replacement vehicle. Order on Motion to Value Collateral, Dckt. 63. The court did not authorize Debtor to use their income. However, Debtor has recently filed an Amended Plan which uses Debtor's bonus to purchase a replacement vehicle. The Plan does not authorize Debtor to use Debtor's tax refund.

4. Auto Empire has agreed to carry the balance of the purchase, in house at 0% interest, with payments of \$616.64 for 14 months.

5. The purchase does not adversely affect creditors because it does not alter Plan payments.

Debtor refers to Exhibit A, the contract. Debtor's attached exhibit is alleged to be a purchase contract, however, the contract is blank. Dckt. 71. The court cannot confirm what the purchase price of the vehicle is, the monthly contractual obligations, when payments commence, and what the interest rate will be.

Additionally, Debtor's Schedule I and J indicates only a net income of \$660. Debtor's Schedule J does not include monthly car expenses. Debtor's proposed Plan requires monthly payments of \$660. Amended Plan, Dckt. 81. Debtor's net income is \$660. Schedule J, Dckt. 38. There does not appear to be sufficient income to support an additional car payment.

Given the failure to provide the court with a copy of the purchase contract and Debtor's lack of income to support an additional obligation, the Motion is denied.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Incur Debt filed by Terrance Levell Hall and Sacha Cadell Hall ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Incur Debt is denied without prejudice.

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

**Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the Objection. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).**

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Local Rule 9014-1(f)(2) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, and Debtor's Attorney on May 24, 2023. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection. At the hearing -----.

<p><b>The Objection to Confirmation of Plan is sustained.</b></p>
---

The Chapter 13 Trustee, David Cusick ("Trustee") opposes confirmation of the Plan on the basis that:

1. Multiple Plans Filed - Debtor filed two plans on April 17, 2023.
2. Debtor failed to appear at Meeting of Creditors.
3. Debtor failed to provide Trustee with Federal Income Tax Return.

## DISCUSSION

Trustee's objections are well-taken.

### **Failure to Appear at 341 Meeting**

Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. Appearance is mandatory. *See* 11 U.S.C. § 343. Attempting to confirm a plan while failing to appear and be questioned by Trustee and any creditors who appear represents a failure to cooperate. *See* 11 U.S.C. § 521(a)(3). That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

Trustee notes the Meeting of Creditors is continued to June 22, 2023 at 1:00 p.m.

### **Failure to Provide Tax Returns**

Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. *See* 11 U.S.C. § 521(e)(2)(A)(i); FED. R. BANKR. P. 4002(b)(3). Debtor has failed to provide the tax transcript. That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

### **Filing a New Plan**

Debtor filed two Plans on April 17, 2023. Dckts. 9, 12. The court notes, filing a new plan is a *de facto* withdrawal of the pending plan. Therefore, it appears Debtor seeks to prosecute the second filed Plan, Dckt. 12.

At the hearing, ~~XXXXXXXXXX~~

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The Objection is sustained, and the Plan is not confirmed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.



# FINAL RULINGS

15. [23-20612](#)-E-13      KENNETH CARUTHERS      MOTION TO VALUE SECURED CLAIM  
GC-1      Gerald Glazer      OF CARMAX BUSINESS SERVICES, LLC,  
15 thru 16      4-24-23 [24]

**Final Ruling:** No appearance at the June 13, 2023 hearing is required.  
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The hearing on the Motion to Value the Secured Claim of CarMax Business Services, LLC (“CarMax”) was vacated by prior court order (Dckt. 39), the court having granted the Motion pursuant to the filed Stipulation (Dckt. 35) between Debtor and CarMax.

16. [23-20612](#)-E-13      KENNETH CARUTHERS      CONTINUED OBJECTION TO  
[SKI](#)-1      Gerald Glazer      CONFIRMATION OF PLAN BY CARMAX  
BUSINESS SERVICES, LLC  
4-12-23 [14]

**Final Ruling:** No appearance at the June 13, 2023 Hearing is required.  
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The hearing on the Objection to Confirmation of Plan was vacated by prior court order (Dckt. 40).

**Final Ruling:** No appearance at the June 13, 2023 hearing is required.

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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 9, 2023. By the court’s calculation, 35 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the Amended Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

<p><b>The Motion to Confirm the Amended Plan is granted.</b></p>
--

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, William McCulloch (“Debtor”) has provided evidence in support of confirmation. The Chapter 13 Trustee, David Cusick (“Trustee”), filed a Response indicating non-opposition on May 30, 2023. Dckt. 29. The Amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, William McCulloch (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, and Debtor's Amended Chapter 13 Plan filed on May 9, 2023, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

18. [23-20041-E-13](#)  
[EJS-2](#)

**ARTHUR MEASTAS AND  
JANELLE SNYDER  
Eric Schwab**

**MOTION TO CONFIRM PLAN  
4-26-23 [\[32\]](#)**

**Final Ruling:** No appearance at the June 13, 2023 hearing is required.

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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 26, 2023. By the court's calculation, 48 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the Amended Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

<p><b>The Motion to Confirm the Amended Plan is granted.</b></p>
--

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtors, Arthur Meastas and Janelle Snyder ("Debtors") have provided evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on May 24, 2023. Dckt. 38. The Amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Amended Chapter 13 Plan filed by the debtors, Arthur Meastas and Janelle Snyder (“Debtors”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, and Debtors’ Amended Chapter 13 Plan filed on April 26, 2023, is confirmed. Debtors’ Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick (“Trustee”), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

**Final Ruling:** No appearance at the June 13, 2023 hearing is required.

-----

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 12, 2023. By the court’s calculation, 32 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days’ notice when requested fees exceed \$1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days’ notice for written opposition).

Under the facts and circumstances of this Motion, the court shortens the time to the 32 days given.

The Motion for Allowance of Professional Fees has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

<p><b>The Motion for Allowance of Professional Fees is granted.</b></p>
---

Lisa McKee, on behalf of Liviakis Law Firm, the Attorney (“Applicant”) for Daniel Kevin Snook and Sharon Lynne Azevedo, the Chapter 13 Debtor (“Client”), makes a Request for the Additional Allowance of Fees and Expenses in this case.

Fees are requested for the period December 31, 2022, through May 11, 2023. Applicant requests fees in the amount of \$3,965.50.

## TRUSTEE'S NONOPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed a non-opposition on May 25, 2023. Dckt. 89. Trustee states they believe the serves were needed and fees reasonable.

## APPLICABLE LAW

### Statutory Basis For Professional Fees

Pursuant to 11 U.S.C. § 330(a)(3),

In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including—

(A) the time spent on such services;

(B) the rates charged for such services;

(C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;

(D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;

(E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and

(F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

(i) unnecessary duplication of services; or

(ii) services that were not—

(I) reasonably likely to benefit the debtor's estate;

(II) necessary to the administration of the case.

11 U.S.C. § 330(a)(4)(A). An attorney must "demonstrate only that the services were reasonably likely to benefit the estate at the time rendered," not that the services resulted in actual, compensable, material benefits to the estate. *Ferrette & Slatter v. United States Tr. (In re Garcia)*, 335 B.R. 717, 724 (B.A.P. 9th Cir. 2005) (citing *Roberts, Sheridan & Kotel, P.C. v. Bergen Brunswick Drug Co. (In re Mednet)*, 251 B.R.

103, 108 (B.A.P. 9th Cir. 2000)). The court may award interim fees for professionals pursuant to 11 U.S.C. § 331, which award is subject to final review and allowance pursuant to 11 U.S.C. § 330.

### **Reasonable Fees**

A bankruptcy court determines whether requested fees are reasonable by examining the circumstances of the attorney's services, the manner in which services were performed, and the results of the services, by asking:

- A. Were the services authorized?
- B. Were the services necessary or beneficial to the administration of the estate at the time they were rendered?
- C. Are the services documented adequately?
- D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?
- E. Did the attorney exercise reasonable billing judgment?

*In re Garcia*, 335 B.R. at 724 (citing *In re Mednet*, 251 B.R. at 108; *Leichty v. Neary (In re Strand)*, 375 F.3d 854, 860 (9th Cir. 2004)).

### **Reasonable Billing Judgment**

Even if the court finds that the services billed by an attorney are “actual,” meaning that the fee application reflects time entries properly charged for services, the attorney must still demonstrate that the work performed was necessary and reasonable. *Unsecured Creditors’ Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). An attorney must exercise good billing judgment with regard to the services provided because the court’s authorization to employ an attorney to work in a bankruptcy case does not give that attorney “free reign to run up a [fees and expenses] tab without considering the maximum probable recovery,” as opposed to a possible recovery. *Id.*; see also *Brosio v. Deutsche Bank Nat’l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) (“Billing judgment is mandatory.”). According to the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney is obligated to consider:

- (a) Is the burden of the probable cost of legal services disproportionately large in relation to the size of the estate and maximum probable recovery?
- (b) To what extent will the estate suffer if the services are not rendered?
- (c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

*In re Puget Sound Plywood*, 924 F.2d at 958–59 (citing *In re Wildman*, 72 B.R. 700, 707 (N.D. Ill. 1987)).

A review of the application shows that Applicant's services for the Estate include sale of assets, case administration, and fee applications. The court finds the services were beneficial to Client and the Estate and were reasonable.

### **"No-Look" Fees**

In this District, the Local Rules provide consumer counsel in Chapter 13 cases with an election for the allowance of fees in connection with the services required in obtaining confirmation of a plan and the services related thereto through the debtor obtaining a discharge. Local Bankruptcy Rule 2016-1 provides, in pertinent part,

(a) Compensation. Compensation paid to attorneys for the representation of chapter 13 debtors shall be determined according to Subpart (c) of this Local Bankruptcy Rule, unless a party-in-interest objects or the attorney opts out of Subpart (c). The failure of an attorney to file an executed copy of Form EDC 3-096, Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys, shall signify that the attorney has opted out of Subpart (c). When there is an objection or when an attorney opts out, compensation shall be determined in accordance with 11 U.S.C. §§ 329 and 330, Fed. R. Bankr. P. 2002, 2016, and 2017, and any other applicable authority."

...

(c) Fixed Fees Approved in Connection with Plan Confirmation. The Court will, as part of the chapter 13 plan confirmation process, approve fees of attorneys representing chapter 13 debtors provided they comply with the requirements to this Subpart.

(1) The maximum fee that may be charged is \$4,000.00 in nonbusiness cases, and \$6,000.00 in business cases.

(2) The attorney for the chapter 13 debtor must file an executed copy of Form EDC 3-096, Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys.

(3) If the fee under this Subpart is not sufficient to fully and fairly compensate counsel for the legal services rendered in the case, the attorney may apply for additional fees. The fee permitted under this Subpart, however, is not a retainer that, once exhausted, automatically justifies a motion for additional fees. Generally, this fee will fairly compensate the debtor's attorney for all preconfirmation services and most postconfirmation services, such as reviewing the notice of filed claims, objecting to untimely claims, and modifying the plan to conform it to the claims filed. Only in instances where substantial and unanticipated post-confirmation work is necessary should counsel request additional compensation. Form EDC 3-095, Application and Declaration RE: Additional Fees and Expenses in Chapter 13 Cases, may be used when seeking additional fees. The necessity for a hearing on the application shall be governed by Fed. R. Bankr. P. 2002(a)(6).

The Order Confirming the Chapter 13 Plan expressly provides that Applicant is allowed \$4,000.00 in attorneys' fees, the maximum set fee amount under Local Bankruptcy Rule 2016-1 at the time of confirmation. Dckt. 29. Applicant prepared the order confirming the Plan.



## **Lodestar Analysis**

If Applicant believes that there has been substantial and unanticipated legal services that have been provided, then such additional fees may be requested as provided in Local Bankruptcy Rule 2016-1(c)(3). The attorney may file a fee application, and the court will consider the fees to be awarded pursuant to 11 U.S.C. §§ 329, 330, and 331. For bankruptcy cases in the Ninth Circuit, “the primary method” to determine whether a fee is reasonable is by using the lodestar analysis. *Marguiles Law Firm, APLC v. Placide (In re Placide)*, 459 B.R. 64, 73 (B.A.P. 9th Cir. 2011) (citing *Yermakov v. Fitzsimmons (In re Yermakov)*, 718 F.2d 1465, 1471 (9th Cir. 1983)). The lodestar analysis involves “multiplying the number of hours reasonably expended by a reasonable hourly rate.” *Id.* (citing *In re Yermakov*, 718 F.2d at 1471). “This calculation provides an objective basis on which to make an initial estimate of the value of a lawyer’s services.” *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). A compensation award based on the lodestar is a presumptively reasonable fee. *In re Manoa Fin. Co.*, 853 F.2d 687, 691 (9th Cir. 1988).

In rare or exceptional instances, if the court determines that the lodestar figure is unreasonably low or high, it may adjust the figure upward or downward based on certain factors. *Miller v. Los Angeles Cty. Bd. of Educ.*, 827 F.2d 617, 620 n.4 (9th Cir. 1987). Therefore, the court has considerable discretion in determining the reasonableness of a professional’s fees. *Gates v. Duekmejian*, 987 F.2d 1392, 1398 (9th Cir. 1992). It is appropriate for the court to have this discretion “in view of the [court’s] superior understanding of the litigation and the desirability of avoiding frequent appellate review of what essentially are factual matters.” *Hensley*, 461 U.S. at 437. Both the Ninth Circuit and the Bankruptcy Appellate Panel have stated that departure from the lodestar analysis can be appropriate. *See In re Placide*, 459 B.R. at 73 (citing *Unsecured Creditors’ Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 960, 961 (9th Cir. 1991) (holding that the lodestar analysis is not mandated in all cases, thus allowing a court to employ alternative approaches when appropriate); *Digesti & Peck v. Kitchen Factors, Inc. (In re Kitchen Factors, Inc.)*, 143 B.R. 560, 562 (B.A.P. 9th Cir. 1992) (stating that lodestar analysis is the primary method, but it is not the exclusive method)).

## **FEES AND COSTS & EXPENSES REQUESTED**

### **Fees**

Applicant provides a task billing analysis and supporting evidence for the services provided, which are described in the following main categories.

Asset Disposition: Applicant spent 5.7 hours in this category. Applicant prepared the motion to employ realtor and supporting documents and prepared the motion to approve sale of real property in conjunction with the sale of Debtor’s home.

Fee Applications: Applicant spent 1.5 hours in this category. Applicant prepared the application for compensation.

Case Administration: Applicant spent 3.1 hours in this category. Applicant prepared the notice of death and supporting documents and prepared the application for substitution of representative.

The fees requested are computed by Applicant by multiplying the time expended providing the services multiplied by an hourly billing rate. The persons providing the services, the time for which compensation is requested, and the hourly rates are:

<b>Names of Professionals and Experience</b>	<b>Time</b>	<b>Hourly Rate</b>	<b>Total Fees Computed Based on Time and Hourly Rate</b>
Mikalah Liviakis, Attorney	4.7	\$385.00	\$1,809.50
Lisa McKee, Attorney	5.6	\$385.00	\$2,156.00
<b>Total Fees for Period of Application</b>			<b>\$3,965.50</b>

### **Costs and Expenses**

Applicant is not seeking the recovery of costs and expenses in this application.

### **FEES AND COSTS & EXPENSES ALLOWED**

#### **Fees**

The unique facts surrounding the case, including the sale of Debtor's home and seeking substitution as representative of the Debtor, raise substantial and unanticipated work for the benefit of the Estate, Debtor, and parties in interest. The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. The request for additional fees in the amount of \$3,965.50 is approved pursuant to 11 U.S.C. § 330 and authorized to be paid by David Cusick ("the Chapter 13 Trustee") from the available funds of the Plan in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

The court authorizes the Chapter 13 Trustee under the confirmed plan to pay 100% of the fees and costs allowed by the court.

Applicant is allowed, and the Chapter 13 Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Fees	\$3,965.50
Costs and Expenses	\$0.00

pursuant to this Application as final fees pursuant to 11 U.S.C. § 330 in this case.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Allowance of Fees and Expenses filed by Lisa McKee, on behalf of Liviakis Law Firm, ("Applicant"), Attorney having been presented to the

court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Lisa McKee, on behalf of Liviakis Law Firm, is allowed the following fees and expenses as a professional of the Estate:

Lisa McKee, on behalf of Liviakis Law Firm, Professional  
Employed by Daniel Kevin Snook and Sharon Lynne Azevedo  
("Debtor")

Fees in the amount of \$3,965.50,  
Expenses in the amount of \$0.00,

as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for Debtor.

**IT IS FURTHER ORDERED** that David Cusick ("the Chapter 13 Trustee") is authorized to pay the fees allowed by this Order from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

**Final Ruling:** No appearance at the June 13, 2023 hearing is required.

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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 10, 2023. By the court’s calculation, 34 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days’ notice when requested fees exceed \$1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days’ notice for written opposition).

The Motion for Allowance of Professional Fees has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

**The Motion for Allowance of Professional Fees is granted.**

Lisa McKee, on behalf of Liviakis Law Firm, the Attorney (“Applicant”) for Trevor Marshall Haskett, the Chapter 13 Debtor (“Client”), makes a Request for the Additional Allowance of Fees and Expenses in this case.

Fees are requested for the period February 24, 2023, through May 8, 2023. Applicant requests fees in the amount of \$3,465.00 and costs in the amount of \$0.00.

#### **TRUSTEE’S NONOPPOSITION**

Trustee filed a nonopposition on May 22, 2023. Dckt. 54. Trustee states the services were needed and fees are reasonable.

#### **APPLICABLE LAW**

## Statutory Basis For Professional Fees

Pursuant to 11 U.S.C. § 330(a)(3),

In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including—

(A) the time spent on such services;

(B) the rates charged for such services;

(C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;

(D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;

(E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and

(F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

(i) unnecessary duplication of services; or

(ii) services that were not—

(I) reasonably likely to benefit the debtor's estate;

(II) necessary to the administration of the case.

11 U.S.C. § 330(a)(4)(A). An attorney must “demonstrate only that the services were reasonably likely to benefit the estate at the time rendered,” not that the services resulted in actual, compensable, material benefits to the estate. *Ferrette & Slatter v. United States Tr. (In re Garcia)*, 335 B.R. 717, 724 (B.A.P. 9th Cir. 2005) (citing *Roberts, Sheridan & Kotel, P.C. v. Bergen Brunswig Drug Co. (In re Mednet)*, 251 B.R. 103, 108 (B.A.P. 9th Cir. 2000)). The court may award interim fees for professionals pursuant to 11 U.S.C. § 331, which award is subject to final review and allowance pursuant to 11 U.S.C. § 330.

## Reasonable Fees

A bankruptcy court determines whether requested fees are reasonable by examining the circumstances of the attorney's services, the manner in which services were performed, and the results of the services, by asking:

- A. Were the services authorized?
- B. Were the services necessary or beneficial to the administration of the estate at the time they were rendered?
- C. Are the services documented adequately?
- D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?
- E. Did the attorney exercise reasonable billing judgment?

*In re Garcia*, 335 B.R. at 724 (citing *In re Mednet*, 251 B.R. at 108; *Leichty v. Neary (In re Strand)*, 375 F.3d 854, 860 (9th Cir. 2004)).

## Reasonable Billing Judgment

Even if the court finds that the services billed by an attorney are “actual,” meaning that the fee application reflects time entries properly charged for services, the attorney must still demonstrate that the work performed was necessary and reasonable. *Unsecured Creditors’ Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). An attorney must exercise good billing judgment with regard to the services provided because the court’s authorization to employ an attorney to work in a bankruptcy case does not give that attorney “free reign to run up a [fees and expenses] tab without considering the maximum probable recovery,” as opposed to a possible recovery. *Id.*; see also *Brosio v. Deutsche Bank Nat’l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) (“Billing judgment is mandatory.”). According to the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney is obligated to consider:

- (a) Is the burden of the probable cost of legal services disproportionately large in relation to the size of the estate and maximum probable recovery?
- (b) To what extent will the estate suffer if the services are not rendered?
- (c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

*In re Puget Sound Plywood*, 924 F.2d at 958–59 (citing *In re Wildman*, 72 B.R. 700, 707 (N.D. Ill. 1987)).

A review of the application shows that Applicant’s for the Estate include drafting motions and declarations, preparing exhibits, and related correspondence for the sale of Debtor’s property, drafting a Motion to Incur Debt, and drafting the current Fee Application. The court finds the services were beneficial to Client and the Estate and were reasonable.

## **“No-Look” Fees**

In this District, the Local Rules provide consumer counsel in Chapter 13 cases with an election for the allowance of fees in connection with the services required in obtaining confirmation of a plan and the services related thereto through the debtor obtaining a discharge. Local Bankruptcy Rule 2016-1 provides, in pertinent part,

(a) Compensation. Compensation paid to attorneys for the representation of chapter 13 debtors shall be determined according to Subpart (c) of this Local Bankruptcy Rule, unless a party-in-interest objects or the attorney opts out of Subpart (c). The failure of an attorney to file an executed copy of Form EDC 3-096, Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys, shall signify that the attorney has opted out of Subpart (c). When there is an objection or when an attorney opts out, compensation shall be determined in accordance with 11 U.S.C. §§ 329 and 330, Fed. R. Bankr. P. 2002, 2016, and 2017, and any other applicable authority.”

...

(c) Fixed Fees Approved in Connection with Plan Confirmation. The Court will, as part of the chapter 13 plan confirmation process, approve fees of attorneys representing chapter 13 debtors provided they comply with the requirements to this Subpart.

(1) The maximum fee that may be charged is \$4,000.00 in nonbusiness cases, and \$6,000.00 in business cases.

(2) The attorney for the chapter 13 debtor must file an executed copy of Form EDC 3-096, Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys.

(3) If the fee under this Subpart is not sufficient to fully and fairly compensate counsel for the legal services rendered in the case, the attorney may apply for additional fees. The fee permitted under this Subpart, however, is not a retainer that, once exhausted, automatically justifies a motion for additional fees. Generally, this fee will fairly compensate the debtor’s attorney for all preconfirmation services and most postconfirmation services, such as reviewing the notice of filed claims, objecting to untimely claims, and modifying the plan to conform it to the claims filed. Only in instances where substantial and unanticipated post-confirmation work is necessary should counsel request additional compensation. Form EDC 3-095, Application and Declaration RE: Additional Fees and Expenses in Chapter 13 Cases, may be used when seeking additional fees. The necessity for a hearing on the application shall be governed by Fed. R. Bankr. P. 2002(a)(6).

The Order Confirming the Chapter 13 Plan expressly provides that Applicant is allowed \$4,000.00 in attorneys’ fees, the maximum set fee amount under Local Bankruptcy Rule 2016-1 at the time of confirmation. Dckt. 17. Applicant prepared the order confirming the Plan.

## **Lodestar Analysis**

If Applicant believes that there has been substantial and unanticipated legal services that have been provided, then such additional fees may be requested as provided in Local Bankruptcy Rule 2016-

1(c)(3). The attorney may file a fee application, and the court will consider the fees to be awarded pursuant to 11 U.S.C. §§ 329, 330, and 331. For bankruptcy cases in the Ninth Circuit, “the primary method” to determine whether a fee is reasonable is by using the lodestar analysis. *Marguiles Law Firm, APLC v. Placide (In re Placide)*, 459 B.R. 64, 73 (B.A.P. 9th Cir. 2011) (citing *Yermakov v. Fitzsimmons (In re Yermakov)*, 718 F.2d 1465, 1471 (9th Cir. 1983)). The lodestar analysis involves “multiplying the number of hours reasonably expended by a reasonable hourly rate.” *Id.* (citing *In re Yermakov*, 718 F.2d at 1471). “This calculation provides an objective basis on which to make an initial estimate of the value of a lawyer’s services.” *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). A compensation award based on the lodestar is a presumptively reasonable fee. *In re Manoa Fin. Co.*, 853 F.2d 687, 691 (9th Cir. 1988).

In rare or exceptional instances, if the court determines that the lodestar figure is unreasonably low or high, it may adjust the figure upward or downward based on certain factors. *Miller v. Los Angeles Cty. Bd. of Educ.*, 827 F.2d 617, 620 n.4 (9th Cir. 1987). Therefore, the court has considerable discretion in determining the reasonableness of a professional’s fees. *Gates v. Duekmejian*, 987 F.2d 1392, 1398 (9th Cir. 1992). It is appropriate for the court to have this discretion “in view of the [court’s] superior understanding of the litigation and the desirability of avoiding frequent appellate review of what essentially are factual matters.” *Hensley*, 461 U.S. at 437. Both the Ninth Circuit and the Bankruptcy Appellate Panel have stated that departure from the lodestar analysis can be appropriate. *See In re Placide*, 459 B.R. at 73 (citing *Unsecured Creditors’ Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 960, 961 (9th Cir. 1991) (holding that the lodestar analysis is not mandated in all cases, thus allowing a court to employ alternative approaches when appropriate); *Digesti & Peck v. Kitchen Factors, Inc. (In re Kitchen Factors, Inc.)*, 143 B.R. 560, 562 (B.A.P. 9th Cir. 1992) (stating that lodestar analysis is the primary method, but it is not the exclusive method)).

## **FEES AND COSTS & EXPENSES REQUESTED**

### **Fees**

Applicant provides a task billing analysis and supporting evidence for the services provided, which are described in the following main categories.

Motion to Authorize Sale: Applicant spent 5.5 hours in this category. Applicant’s services include drafting a motion to authorize sale, declaration, preparing exhibits, and related correspondence. The tasks were completed twice as the initial buyer backed out.

Motion to Incur Debt: Applicant spent 2.1 hours in this category. Applicant’s services include drafting a motion for authority to incur debt, declaration, preparing the exhibits, and related correspondence.

Fee Applications: Applicant spent 1.4 hours in this category. Applicant’s services include this application for compensation.

The fees requested are computed by Applicant by multiplying the time expended providing the services multiplied by an hourly billing rate. The persons providing the services, the time for which compensation is requested, and the hourly rates are:



<b>Names of Professionals and Experience</b>	<b>Time</b>	<b>Hourly Rate</b>	<b>Total Fees Computed Based on Time and Hourly Rate</b>
Lisa McKee	5.6	\$385.00	\$2,156.00
Mikalah Liviakis	3.4	\$385.00	\$1,309.00
<b>Total Fees for Period of Application</b>			\$3465.00

### **Costs and Expenses**

Applicant does not seek costs and expenses.

### **FEES AND COSTS & EXPENSES ALLOWED**

#### **Fees**

The unique facts surrounding the case, including motions to authorize sale and incur debt, raise substantial and unanticipated work for the benefit of the Estate, Debtor, and parties in interest. The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. The request for additional fees in the amount of \$3,465.00 is approved pursuant to 11 U.S.C. § 330 and authorized to be paid by David Cusick (“the Chapter 13 Trustee”) from the available funds of the Plan in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

Applicant is allowed, and the Chapter 13 Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Fees	\$3,465.00
Costs and Expenses	\$0.00

pursuant to this Application as final fees pursuant to 11 U.S.C. § 330 in this case.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Allowance of Fees and Expenses filed by Lisa McKee, on behalf of Liviakis Law Firm, (“Applicant”), Attorney having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Lisa McKee, on behalf of Liviakis Law Firm, is allowed the following fees and expenses as a professional of the Estate:

Lisa McKee, on behalf of Liviakis Law Firm, Professional  
Employed by Trevor Marshall Haskett (“Debtor”)

Fees in the amount of \$3,465.00  
Expenses in the amount of \$0.00,

as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for Debtor.

**IT IS FURTHER ORDERED** that David Cusick (“the Chapter 13 Trustee”) is authorized to pay the fees allowed by this Order from the available Plan Funds in a manner consistent with the order of distribution in a Chapter 13 case.

21. [23-20876-E-13](#)  
[MMM-1](#)

**LUCIA POPOVICH**  
**Mohammad Mokarram**

**MOTION TO CONFIRM PLAN**  
**5-8-23 [16]**

**Final Ruling:** No appearance at the June 13, 2023 hearing is required.

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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 8, 2023. By the court’s calculation, 36 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the Amended Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

<b>The Motion to Confirm the Amended Plan is granted.</b>
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11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, Lucia Lechuga Popovich (“Debtor”) has provided evidence in support of confirmation. The Chapter 13 Trustee, David Cusick (“Trustee”), filed a Non-Opposition on May 22, 2023. Dckt. 21. The Amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Lucia Lechuga Popovich (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, and Debtor’s Amended Chapter 13 Plan filed on May 8, 2023, is confirmed. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick (“Trustee”), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

22. [23-20878-E-13](#) **BROOK/LONELL HARRIS** **MOTION TO CONFIRM PLAN**  
[SMJ-1](#) **Scott Johnson** **5-8-23 [14]**

**Final Ruling:** No appearance at the June 13, 2023 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on May 8, 2023. By the court’s calculation, 36 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the Amended Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

**The Motion to Confirm the Amended Plan is granted.**

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, Brook Katherine Harris and Lonell Samuel Harris (“Debtor”) have provided evidence in support of confirmation. The Chapter 13 Trustee, David Cusick (“Trustee”), filed a Non-Opposition on May 22, 2023. Dckt. 20. The Amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Brook Katherine Harris and Lonell Samuel Harris (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, and Debtor’s Amended Chapter 13 Plan filed on May 8, 2023, is confirmed. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick (“Trustee”), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.